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June 22, 2022

BY ECF

Honorable Eric R. Komitee
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Cruz v. United States of America, et al.*, 20 CV 891 (EK) (SJB)

Your Honor:

I represent plaintiff in the above-referenced matter. I write to respectfully request that the argument contained in defendant Santana's letter filed earlier today at DE #57 be stricken.

If it should please the Court, we take no issue with defendant Santana bringing the Supreme Court's decision in *Egbert v. Boule* to the Court's attention. Indeed, we did not object when Mr. Santana filed a letter last year notifying this Honorable Court that certiorari had been granted. *See* DE #52. However, defendant Santana's filing today, submitted without leave, amounts to a three-page, single-spaced sur-reply in violation of the briefing schedule and Rule III.D.1 of this Honorable Court's Individual Practices. *See, e.g., Neary v. Weichert*, 489 F. Supp. 3d 55, 62 (E.D.N.Y. 2020), *appeal dismissed sub nom. Neary v. Pon*, No. 20-3584, 2021 WL 1546028 (2d Cir. Apr. 15, 2021), *cert. denied sub nom. Neary v. Ahuga*, 142 S. Ct. 605, 211 L. Ed. 2d 375 (2021) ("The general principle is that supplemental filings require leave of the court.") (citations omitted) (collecting cases); *Trombetta v. Novocin*, 18 CV 993 (RA), 2021 WL 6052198, *13 (S.D.N.Y. Dec. 21, 2021), *reconsideration denied*, 2022 WL 280986 (S.D.N.Y. Jan. 31, 2022) ("Sur-replies filed without the court's permission are generally considered improper.") (citation omitted). In the alternative, plaintiff respectfully requests leave to address defendants' arguments in a supplemental opposition brief.

Thank you for your consideration of this request.

Respectfully submitted,

Gabriel P. Harvis

cc: Defense Counsel